No. 19-7119

IN THE
SUPREME COURT OF THE UNITED STATES

LARRY L. BELL,

Petitioner

- vs. -

KEVIN RANSOM, Superintendent, State Correctional Institution at Dallas; The District Attorney of the County of Philadelphia; and the Attorney General of the State of Pennsylvania,

Respondent

PETITION FOR REHEARING OF FEBRUARY 24, 2020 ORDER DENYING CERTIORARI

TO UNITED STATES SUPREME COURT JUSTICES:

AND NOW, comes the pro se Petitioner LARRY L. BELL, respectfully requesting that this Honorable Court grant Rehearing of its Order dated February 24, 2020, which has denied the Petitioner's pro se petition for a Writ of Certiorari, with Justice Alito taking no part in the consideration or decision of this petition for a Writ of Certiorari, and avers as follows:

The Petition for Writ of Certiorari previously filed herein presented the question of "Whether the District Court's denial of Petitioner's pro se Motion Pursuant to Federal Rules of Civil Procedure 60(b)(5) & 60(b)(6) for Relief from Final Judgment and the Third Circuit's decline to issue a Certificate of Appealability (COA) requested by Petitioner pro se to Appeal that decision, was an abuse of discretion?"

CONCISE STATEMENT OF FACTS

Commencing on April 6, 1983 and ending on April 13, 1983, a Philadelphia County of Pennsylvania Jury, sitting before the Honorable David N. Savitt, convicted Petitioner, a first Offender Larry L. Bell who testified, and his defense was that his Co-defendant Elwood "Atheen" Small went on a rampage for his own personal motives when he stabbed the victim(s), thus the killing was not in furtherance of the robbery, together with Co-Defendant Elwood Small of Second-degree Murder, Aggravated

Assault and Criminal Conspiracy, after the Judge did not tell the Jury that the prosecution had to prove that the killing was "in furtherance" of the robbery in order for the killing to rise to the level of Second-degree Murder.

On November 9, 1983 the Honorable David N. Savitt sentenced Petitioner to Life imprisonment without the possibility of parole, and two concurrent two and one-half (2½) to five (5) year terms of imprisonment.

On Direct Appeal from the judgment of sentence, the Pennsylvania Superior Court affirmed the judgment of sentence on March 22, 1982. See **Commonwealth v. Bell**, 494 A.2d 476 (Pa.Super. 1985).

On March 1, 1990, eight years after his conviction and five years after it had became final, Petitioner filed an Application for State Post-Conviction Relief asserting ineffective assistance of prior Counsel, prosecutorial misconduct, Trial Court error, that the evidence was insufficient to sustain Petitioner's conviction, and that the Court abused its discretion in sentencing Petitioner. Following Evidentiary Hearings on March 5, 1993 and July 12, 1993, the Honorable Judge Joseph I. Papalini denied Petitioner's Application for Post-Conviction Relief on June 24, 1994.

Petitioner appealed and, on October 18, 1995 the Pennsylvania Superior Court's Eastern District vacated the judgment of sentence on the basis that Petitioner's conviction was in violation of the Due Process Clause of the Fourteenth Amendment, as provided in Carella v. California, 491 U.S. 263 (1989) and the Sixth Amendment as provided in Strickland v. Washington, 466 U.S. 668 (1984) concerning, since the proper instruction was never given Trial-Counsel's error in not asking for such an instruction was of a constitutional dimension, and remanded for further proceedings. **Commonwealth v. Larry L. Bell**, No. 02510 Philadelphia 1994 (Memorandum).

The matter was remanded for the Post-Conviction Relief Act Court to determine whether the Commonwealth would be prejudiced in its ability to retry Petitioner in accordance with the provisions of 42 Pa.C.S.A. §9543(b), the Pennsylvania Superior Court directed within its Order that "if the Post-Conviction Relief Act Court found the Commonwealth would suffer prejudice in its ability to retry this matter, the Pennsylvania Superior Court instructed the Post-Conviction Relief Act Court to reinstate the Order denying Post-Conviction Relief ("PCRA").

Upon remand, the PCRA Court conducted an Evidentiary Hearing on August 5, 1996. On November 26, 1996, the PCRA Court, Judge Joseph I. Papalini presiding, reinstated the prior Order denying

Collateral relief on the basis of a State procedural default of §9543(b).

After filing an appeal to the State Appellate Courts, the Superior Court affirmed the Order in a published decision, Commonwealth v. Lanny L. Bell, 706 A.2d 855 (Pa.Super. 1998). The Pennsylvania Supreme Court denied Allocatur on the date of November 16, 1998. 176 E.D. Alloc. 1998.

Petitioner then filed a petition for Federal Habeas Corpus relief, 28 U.S.C. §2254, which was denied on the date of April 7, 2000. Bell v. Larkins, No. 99-cv-1985. On October 12, 2000, the Court of Appeals for the Third Circuit denied Petitioner's request for a Certificate of Appealability ("COA"). **Bell v. Larkins**, No. 00-1799.

Petitioner's petition for Writ of Certiorari was denied by this Honorable Court on the date of March 25, 2002. Bell v. Larkins, No. 01-7933.

On March 1, 2018 the Petitioner, a prisoner in Pennsylvania's SCI Dallas Correctional Facility, while during research on the CD-ROM Law Computer stumbled across a change of circumstances announced in the Co-defendant's case of Commonwealth v. Elwood Small, 2017 Phila. Ct. Com. Pl. LEXIS 328, CP-51-CR-0521601-1982, PP# 486970 (decided December 14, 2017) revealing that on December 5, 2017 a Detective Investigator Ralph Latchum testified at a Hearing held for Co-defendant Small, quoted by Judge Lisa M. Rau "successfully perhaps aided by technological advances not available in 1996 when Mr. Bell's Evidentiary Hearing on prejudice to place-located almost all the witnesses, including the Commonwealth's most important witness, Patrick Blake".

Pursuant to this finding, Petitioner filed a Motion for Relief from the April 7, 2000 judgement where United States District Court Judge Louis C. Bechtle decided to adopt Magistrate Judge Jacob P. Hart's R&R, pursuant to Federal Rules of Civil Procedure 60(b)(5) & 60(b)(6) in April of 2018, asking the United States District Court For The Eastern District of Pennsylvania to reconsider the Order, arguing that the premise relied upon in the requirements of 42 Pa.C.S.A. §9543(b) to reinstate Petitioner's unconstitutional conviction, "prejudice to the Commonwealth's ability to retry the case" no longer existed.

The case was assigned to the Honorable Cynthia M. Rufe since United States District Court Judge Louis C. Bechtle had since retired.

On January 3, 2019 United States District Court Judge Cynthia M. Rufe, denied the Motion and sua sponte ruled "There is no probable cause to issue a Certificate of Appealability

("COA"), while citing **Slack v. McDaniel**, 529 U.S. 473, 120 S.Ct. 1595 (U> S. 2000).

Petitioner submitted a request for issuance of a Certificate of ppealability ("COA") under 28 U.S.C. §2253(c)(1) in the United States Court of Appeals For The Third Circuit under C.A. **19-1255**, on June 7, 2019 Circuit Justices AMBRO, KRAUSE and PORTER issued a Order stating quote "Appellant's Application for a Certificate of Appelability is denied. See 28 U.S.C. §2253(c)(1); **Morris v. Horn**, 187 F.3d 333, 340-41 (3d Cir. 1999) (requiring a certificate of appealability to appeal a District Court's denial of a motion under Fed.R.R.Civ.P. 60(b). Reasonable jurist would not debate the District Court's ruling that Appellant was not entitled to releif on the basis of his April 2018 motion filed pursuant to Federal rule of Civil Procedure 60(b). See **Slack v. McDaniel**, 529 U.S. 473, 484 (2000_; **mORRIS**, 187 f.3D AT 341."

After Petitioner's request for Rehearing was denied, Petitioner filed a petition for Writ of Certiorari in the Supreme Court of the United States, Docketed at No. 19-7119, on the date of February 24, 2020 this Honorable Court entered a Order denying Petitioner's petition for a Writ of Certiorari. Justice Alito took no part in the consideration or decision of this petition. See attached Order.

Rule 60(b) allows a party to seek relief from a final judgment, and request re-opening of his case under a limited set of circumstances including *fraud, mistake, and newly discovered evidence*. **Gonzalez v. Crosby**, 545 U.S. 254, 528 (2005). Petitioner's motion filed in the United States District Court For The Eastern District of Pennsylvania sought relief under Rule 60(b)(5) and 60(b)(6), Rule 60(b)(6) is the broadest provision in the rule, allowing re-opening when the moving party demonstrates "any other reason justifying relief." But this broad language is subject to strict Imiitations - a movant must show "extraordinary circumstances," and the claim must be made "within a reasonable time." *Id*, at 535.

Petitioner brought a "independent action for relief under Federal Rule of Civil Procedure 60(b)" which preserves whatever power Federal Courts had piror to the adoption of Rule 60 to relieve a party of a judgment by means of an independent action according to traditional principles of equity. One such power is the inherent equitable power to vacate a judgement that has been obtained through the commission of anabling the United Sattes District Court to vacate judgment whenever such action is appropriate to establish justice, where there are reasons for relief other than those set out in the more specific clauses of Rule 60(b)(1) thru (5).

The only proper subject for a 60(b) Motion in the habeas context is "defect in the integrity of the Federal Court proceedings. **Gonzalez v.**

Crosby, 545 U.S. 524, 532 (2005). For example this Honorable Court hld in ***Gonzalez*** that an argument about the misapplication of the habeas deadling was a proper ground for a 60(b) motion, as are attacks on acourt's conclusion that a claim is defaulted or unexhausted. ***Id***. at 532-33 & n.4.

Although Petitioner's Rule 60(b) Motion filed under Rule 60(b)(5) & 60 (b)(6) are being filed nineteen years after the Federal judgment he seeks to re-open, exceptional circumstances" justify the delay, Post-Conviction Relief Act ("PCRA") Judge Joseph Papalini ruled that the Commonwealth established that Patrick Blake was unavailable at and after the July 12, 1993 videntiary Hearing and upon a Rehearing.

The federal judgment sought to be re-opened is over nineteen years old, which is well beyond the "reasonable time" limitation to Rule 60(b)(6). See **Moolenaar v. Government of the Virgin Island**, 822 F.2d 1342, 1348 (3d Cir. 1987)(Rule 60(b)(6) motion was not filed within a reasonable time when it was filed nearly two years after entry of judgment sought to be re-opened); **Gordon v. Monoson**, 239 Fed.Appx. 710, 713 (3d Cir. 2007) (nonprecedential)("A motion under Rule 60(b)(6) filed more than a year after final judgment is generally untimely unless "extraordinary circumstances" excuse the party's failure to proceed sooner."); **Burgos v. Vaughn**, No. 01-cv-2431, 2006 WL 120017, at *1 (E.D.Pa. Jan. 12, 2006) (finding motion "untimely under 60(b)(6) since Petitioner waited well over 2 1/2 years to file this Petion[,]" which "exceeds the reasonable time given under 60(b)(6) in which to file").

In his Motion filed in the United Sattes District Court of the Eastern District of Pennsylvania, Petitioner did acknowledge the "reasonable time" requirement and provided explanations for his nineteen year delay in filing the motion.

As discussed, on April 2018 Petitioner returned to Federal Court, where he filed a Motion to Re-opn his §2254 case under Federal Rule of Civil Procedure 60(b)(5) and 60(b)(6), Rule 60(b) enumerates specific circumstances in which a party may be relieved of the effect of a judgment, such as mistake, newly discovered evidence, fruad, and the like. The Rule concludes with a catchall category subdivision (b)(6) - providing that a Court may lift a judgment for "any other reason that justifies relief." Relief is available under subdivision (b)(6), however only in "extraordinary circumstances" and the Court has explained that "such circumstances will rarely occur in the habaes context. **Gonzalez v. Crosby**, 545 U.S. 524, 125 S.Ct. 2641 (2005).

Federal Rule of Civil Procedure 60(b)(5) permits a party to obtain relief from a judgment or Order of, among other things, applying [the judgment or

Order] prospectively is no longer equitable." Rule 60(b)(5) may not be used to challenge the legal conclusions on which a prior judgment or Order rests, but the Rule provides means by which a party can ask a Court to modify or vacate a judgment or Order if "a significant change either in factual conditions or in law renders continued enforecment detrimental to the public interest." **Rufo v. Inmates of Suffolk County Jail**, 502 U.S. 367, 384, 112 S.Ct. 748 (1992). The party seeking relief bears the burden of establishing that changed circumstances warrant relief.

Pennsylvania prisoner LARRY L. BELL asks this Honorable Court to reconsider its Order entered *February 24, 2020* denying his petition for a Writ of Certiorari.

Petitioner argues that jurist of reason could debate whether Federal Rule of Civil Pocedure 60(b)(5) and 60(b)(6) permits him to challenge the District Court's judgment denying his §2254 petition on the date of April 7, 2000, where United States District Court Judge Louis C. Bechtle adopted United States Magistrate Judge Jacob P. Hart's March 17, 2000 Report and Recommendation ("R&R") determining that the claims Petitioner raised were procedurally defaulted because the ruling that the delay in filing his Post-Conviction Relief Act ("PCRA") petition prejudiced the Comonwealth, constituted an independent and adequate basis on which the state Courts had denied relief, and the procedural default could not be excused because Petitioner had not shown cause for the delay in raising the claims based on the jury instruction. The Report and Recommendation ("R&R") also stated that Petitioner could not show actual innocence when he was armed with a shotgun, knew his co-defendant had a 12-inch knife, and had testified that his co-defendant stabbed the murder victim when the victim resisted the robbery by throwing punches.

The State Court's November 26, 1997 determination rested on its findings that pursuant to 42 Pa.C.S.A. §9543(b) the Commonwealth would be prejudiced in its ability to retry Petitioner due to Detective Peter Dailey's inability to locate witnesses Patrick Blake who was the Commonwealth's primary witness, Carl McCrary, Marcella McCullough, Willa Mae Lockhart, and Walter Anderson. **Commonwealth v. Bell**, 706 A.2d 855 (Pa.Super. 1998).

Section 9543(b) provides in relevant part: **(b) Exception** - Even if the Petitioner meets the requirements of subsection (a), "the petition **shall be dismissed if it appears that because of delay in filing the petition, the Commonwealth has been prejudiced in its ability to respond to the petition or in its ability to re-try the petitioner**."

The express terms of section 9543(b) refers to a "delay in filing" the dominant purpose of this section is to ensure that the Commonwealth is not prejudiced by a Defendant's delay in pursuing his Post-Conviction rights, either in its ability to respond to the petition or *in its ability to re-try the petitioner*. **Commonwealth v. Renchenski**, 52 A.3d 251 (Pa. 2012).

As discussed, Petitioner filed a Rule 60(b)(5) and 60(b)(6) Motion in the United Sattes District Court for the Eastern District of Pennsylvania, in his Motion Petitioner identified factual predicates justifying reopening the judgment. This included a change in the factual conditions of the State procedural default "the premise that the inability to locate witnesses, including Patrick Blake, prejudiced the Commonwealth's ability to retry this case no longer was valid because on December 14, 2017, a PCRA Court hearing a petition from his co-defendant, Elwood Small, ruled in part that "[t]he Commonwealth's detective successfully - perhaps aided by technological advances not available in 1996 when Petitioner's evidentiary hearing on prejudice took place - located almost all the trial witnesses, "including Blake."

The District Court denied relief on two grounds, first "Rule 60(b)(5) provides that a party may filed a motion for relief from a final judgment if: (1) the judgment ahs been satisfied, released or discahrged; (2) a prior judgment upon which it is based has been reversed or otheriwse vacated; or (3) it is no longer equitable that the judgment should have prospective application." "Rule 60(b)(5) may not be used to challenge the legal conclusion on which a prior judgment or order rests, but the Rule provides a means by which a party can ask a court to modify or vacate a judgment or order if "a significant change either in factual conditions or in law rendered continued enforcement "detrimental ro the public interest." "The judgment at issue, however, is the denial of habeas relief, and the judgment is not prospective within the meaning of Rule 60(b)(5). thus, Petitioner's motion does not fall under any of the provisions of Rule 60(b)(5).

Second the Court determined "Rule 60(b)(6) provides that a party may be relieved from a final judgment or order for "any other reason that justifies relief." However, relief is only applicable in extraordinary and special circumstances, and "[s]uch circumstances rarely occur in the habeas context." In addition, the motion must be filed "within a reasonable time." While a "reasonable time" is not defined, a Rule 60(b)(6) motion filed "more than a year after final judgment is generally considered untimely unless "exceptional circumstances" justify the delay." Particularly relevant here is the Third Circuit's admonition that "[p]rinciples of finality and comity, as expressed through AEDPA and habeas jurisprudence, dictate that federal courts pay ample respect to states' criminal judgments and weigh against disturbing those judgments via 60(b) motions. In that vein, a district court reviewing a habeas petitioner's 60(b)(6) motion may consider whether the conviction and initial federal habeas proceeding were only recently completed or ended years ago. Considerations of repose and fanality become stronger the longer a decision has been settled."

"When all the equities are weighed, Petitioner has not shown cause to

disturb a judgment entered 28 years ago. Petitioner argues taht he filed the motion soon after he learned of the 2017 PCRA court ruling in Small's case. But the apparent ability to locate Blake in 2017, which the PCRA court hearing Small's petition acknowledged could be due to technological advances, does not undermine the conclusion of the state courts that Blake could not be found in 1996 and therefore does not provide a basis to disturb the Court's earlier ruling. Nor is this a case where "a proper demonstration of actual innocence by [Petitioner] should permit Rule 60(b)(6) relief unless the totality of equitable circumstances ultimately weigh heavily in the other direction." Although the state court determined that there was error in the jury charge, Petitioner's own testimony at trial admitted that he committed the robbery with Small, knew that Small had a knife, and that Small stabbed the victims after they resisted the robbery, which Petitioner did not expect Small to do. The evidence does not lend itself to a credible showing that with the correct charge, "no juror, acting reasonably, would have voted to find [Petitioner] guilty beyond a reasonable doubt."

Petitioner sought to appeal the denial of his Rule 60(b)(5) and 60(b)(6) motion. He accordingly filed an application for a COA with the Third Circuit. To obtain a COA, Petitioner was required to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2).

The Third Circuit denied a COA, without explaining the United States District Court of the Eastern of Pennsylvania determination, concluding that "Appellant's application for a certificate of appealabiltiy is denied. See 29 U.S.C. §2253(c); **Morris v. Horn**, 187 F.3d 333, 340-41 (3d Cir. 1999 (requiring a certificate of appealabiltiy to appeal a district court's denial of a motion under Fed.R.Civ.P. 60(b). Reasonable jurists would not debate the District Cout's ruling that Appellant was not entitled to relief on the basis of his April 2018 motion filed pursuant to Federal Rule Civil Procedure 60(b). See **Slack v. McDaniel**, 529 U.S. 473, 484 (2000); **Morris**, 187 F.3d at 341."

This Honorable Court has concluded and empahsized that a COA inquiry is not coextensive with a merits anaysis. **Buck v. Davis**, 580 U.S. ___, 137 S.Ct. ___, 197 L.Ed.2d 1 (2017).

WHEREFORE, for all the foregone reasoning, Petitioner prays that this Honorable Court issue a Order granting reconsideration.

Respectfully submitted,

/s/ Larry L. Bell

LARRY L BELL (AM-9196)

No. 19-7119

IN THE
SUPREME COURT OF THE UNITED STATES

LARRY L. BELL,

Petitioner

- vs. -

KEVIN RANSOM, Superintendent, State Correctional Institution at Dallas; The District Attorney of the County of Philadelphia; and the Attorney General of the State of Pennsylvania,

Respondent

CERTIFICATE OF PARTY UNREPRESENTED BY COUNSEL

Pursuant to Rule 44.2, I hereby certify that I the Petitioner LARRY L. BELL, submits the foregoing [Petition For Rehearing of Order Denying Certiorari dated February 24, 2020] in good faith and not for delay, and is limited to the grounds specified in Rule 44.2 in reference to the captioned matter LARRY L. BELL v. KEVIN RANSOM, Superintendent, State Correctional Institution at Dallas, et al., No. 19-7119.

/s/ Larry L. Bell

LARRY L. BELL
Prison ID #AM-9196
SCI @ DALLAS
1000 FOLLIES ROAD
DALLAS, PA 18612-0286

Dated: March 12, 2020

Additional material from this filing is available in the Clerk's Office.